

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ALLEN J. HECKERMAN**

Claimant

VS.

**TAP ENTERPRISES, INC.**

**d/b/a CUMMINS INDUSTRIAL TOOLS**

Self-Insured Respondent

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Docket No. 1,021,650

**ORDER**

Claimant appeals the November 22, 2005 preliminary hearing Order of Administrative Law Judge John D. Clark. In the preliminary hearing Order, the Administrative Law Judge (ALJ) granted respondent's request to terminate benefits.

**ISSUES**

In claimant's Application for Review, claimant lists the compensability of the claim and all other appealable issues as the issues in contention. In claimant's brief, claimant is more specific, raising the issues as to whether claimant suffered personal injury by accident arising out of and in the course of his employment and whether claimant is in need of additional medical treatment. Those are the only issues before the Board on this appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the Order of the ALJ should remain in full force and effect and the appeal of claimant in this matter should be dismissed.

Claimant traveled around the United States, selling tools wholesale for respondent, working as a crew driver. On June 10, 2004, the date of accident in this matter, respondent was selling tools in Wayne, New Jersey, when, as a result of overexposure to heat, claimant developed kidney failure and was taken to a local hospital. He was returned to Kansas to follow up with his family doctor and was later released to return to work as a load driver. However, respondent could not accommodate claimant in that position.

This matter originally went to preliminary hearing on March 24, 2005, at which time the ALJ determined that claimant had proven that he suffered accidental injury arising

out of and in the course of his employment and referred claimant to Christopher Rodgers, M.D., as the authorized treating physician and ordered temporary total disability compensation. At that preliminary hearing, no appearance was entered by respondent and the referral to Dr. Rodgers was at claimant's attorney's request. As a result of his examination of claimant, Dr. Rodgers issued a letter to claimant's attorney dated April 26, 2005, wherein he states that he did not believe he could support a disability claim for claimant. He also stated that he would prefer that claimant seek further medical care elsewhere, as Dr. Rodgers no longer desired to be involved in claimant's ongoing medical care.<sup>1</sup>

Claimant was next referred to Dr. Robert Hagen for an independent medical examination (IME) at the request of the ALJ by Order of June 23, 2005. However, Dr. Hagen refused the IME referral. Both claimant and respondent attorneys attempted to refer claimant to a nephrologist in the Wichita area. However, the nephrologist groups located in the Wichita area refused to accept an IME order without a referral from another physician.

Claimant was then referred to Paul S. Stein, M.D., a board certified neurological surgeon, for an examination. Dr. Stein did not physically examine claimant, but was presented the opportunity to review the multitude of medical reports dealing with claimant's condition and ongoing treatment with numerous health care providers. While Dr. Stein was asked to make a referral to a nephrologist, he instead determined that claimant was not in need of additional medical treatment as a result of the incident of June 10, 2004.<sup>2</sup>

Not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to certain specific issues which are deemed jurisdictional. Those issues are:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide both timely notice and written claim of the accidental injury?
4. Is there any defense that goes to the compensability of the claim?<sup>3</sup>

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<sup>1</sup> See P.H. Trans. (Nov. 22, 2005), Resp. Ex. 2.

<sup>2</sup> See P.H. Trans. (Nov. 22, 2005), Resp. Ex. 1.

<sup>3</sup> K.S.A. 44-534a(a)(2).

Additionally, the Board may review those preliminary hearing orders where it is alleged that an administrative law judge has exceeded his or her jurisdiction or authority in ordering or denying the benefits requested.<sup>4</sup>

Claimant's need for medical treatment is not one of the jurisdictional issues listed above. Additionally, K.S.A. 44-534a allows an administrative law judge to make a determination regarding whether a claimant is or is not in need of ongoing medical care. Therefore, in this case, the ALJ did not exceed his jurisdiction in concluding that respondent's request to terminate benefits was appropriate.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>5</sup>

The Board concludes that the ALJ's determination on the issue of claimant's entitlement to medical care is not an issue which is appealable from a preliminary hearing Order. Therefore, this appeal should be dismissed for lack of jurisdiction.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of claimant in the above matter should be, and is hereby, dismissed and the Order of Administrative Law Judge John D. Clark dated November 22, 2005, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2006.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
Jeffery R. Brewer, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> K.S.A. 2003 Supp. 44-551.

<sup>5</sup> *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973).